

APPEAL NO. 021171
FILED JULY 8, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on April 9, 2002. The hearing officer determined that the appellant (claimant) is not entitled to change treating doctors to Dr. R, pursuant to Section 408.022; that the respondent (carrier) did not waive the right to dispute the order regarding a change of treating doctor, because the carrier did file its dispute within 10 days after receiving the order; that the claimant had disability beginning September 24, 2001, and continuing through January 28, 2002; that the employer did not tender a bona fide offer of employment (BFOE) to the claimant which would entitle the carrier to adjust post-injury earnings; and that the claimant's treating doctor is Dr. T. The claimant appealed the determinations pertaining to her entitlement to change treating doctors and that the treating doctor is Dr. T, arguing that the hearing officer improperly applied Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 126.9(c)(2) (Rule 126.9(c)(2)). The claimant takes the position that the first doctor she saw was recommended by the employer, that she did not "receive treatment from the doctor for a period of more than 60 days," and that Dr. R was her "initial choice of treating doctor," not a change of treating doctor. In its response, the carrier urges affirmance of the hearing officer's determinations on the appealed issues.

DECISION

Affirmed.

The determinations pertaining to the carrier waiver, disability, and BFOE issues were not appealed and have become final. Section 410.169.

Whether a particular doctor is the employee's initial choice of treating doctor is a factual matter for the hearing officer to determine. Texas Workers' Compensation Commission Appeal No. 94061, decided February 25, 1994. The hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. Section 410.165(a). It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Co. of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Aetna Insurance Co. v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). We will substitute our judgment for that of the hearing officer only when the determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995. We conclude that the determination that Dr. T was the claimant's treating doctor is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust.

Section 408.022 deals with the selection of a doctor and circumstances under which a treating doctor may be changed. Section 408.022(d) provides that a "change of doctor may not be made to secure a new impairment rating or medical report." The hearing officer specifically found that the reason for the claimant's request to change treating doctors was "to get a new medical report that would put her on off work status." The evidence could give rise to different inferences and the claimant's appeal details the evidence from her point of view. The hearing officer, however, is the sole judge of the weight and credibility that is to be given to the evidence. Section 410.165(a). We have reviewed the complained-of determination and conclude that the issue involved a fact question for the hearing officer. The hearing officer reviewed the record and decided what facts were established. We conclude that the hearing officer's determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra*.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **PACIFIC EMPLOYERS INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**MARCUS CHARLES MERRITT
6600 CAMPUS CIRCLE DRIVE EAST, SUITE 200
IRVING, TEXAS 75063.**

Michael B. McShane
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Philip F. O'Neill
Appeals Judge